IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.No.10835 of 2001

The Union of India rep. by
Appropriate Authority
Income Tax Department
108, Mahatma Gandhi Road
Chennai-600 034. ..
Petitioner

versus

1. The Central Administrative Tribunal
Chennai Bench, Madras, rep. by
its Registrar, Chennai-106.

2. Shri B.Subramanian .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records of the Central Administrative Tribunal, Chennai Bench, relating to its proceedings in O.A.No.987 of 1999 dated 11.12.2000 and to quash the same.

For petitioner : Mr.M.Veluswami SCGSC

For 2nd respondent : Mr.Vijay Narayan
Senior Counsel for
Mr.R.Parthiban

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ORDER

CHITRA VENKATARAMAN,J.

The writ petition is preferred by the Union of India, represented by the Appropriate Authority, Income Tax Department, challenging the correctness of the order of the Central Administrative Tribunal, allowing the Original Application preferred by the second respondent in the writ petition. The prayer granted in the application before the Tribunal relates to grant of salary as

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admissible to the post of Executive Engineer from 1.7.1995 till the date he acted so.

2. The applicant before the Central Administrative Tribunal, an Assistant Engineer in Central Public Works Department, was posted as a Valuation Officer before the Income Tax Department. He was transferred from the Valuation Cell Income Tax Department, Chennai, to the Appropriate Authority, Income Tax Department, Chennai, as an Assistant Engineer on and from 16.8.1994. The applicant before the Tribunal claimed that during his tenure as an Assistant Engineer, he performed the duties of an Executive Engineer on account of the retirement of the Executive Engineer (Unit-I) from 1.7.1995 to 31.3.1995 and thereafter from 1.4.1996 to 18.6.1999 on account of the retirement of the Executive Engineer, Unit-II. For his performance of the duties of an Executive Engineer, the applicant in the O.A. claimed pay and allowances as are applicable to an Executive Engineer for the period mentioned above.

3. The applicant made a petition before the Technical Member, Appropriate Authority, dated 28.8.1995 and claimed the salary of an Executive Engineer, in view of the fact that on the retirement of one D.Sundarrajan, Executive Engineer on 30.6.1995, the jurisdiction looked after by him was taken care of by the applicant. This was followed by another petition dated 27.12.1995, reiterating the prayer originally given. Thereafter, on 18.6.1999, once again, the applicant made a petition to the Member of the Appropriate Authority. The applicant stated that he had been performing the duties of an Executive Engineer since July, 1995 under the directions of Member-III, Appropriate Authority and the Superintending Engineer, Appropriate Authority; that even after the retirement of the Executive Engineer Thiru Sundarrajan, from 1.7.1995 to 31.3.1996, he had been looking after the jurisdiction of the Executive Engineer-Unit-III, Thiru V.Sesha Iyer, who had retired thereafter. Considering the fact that he had been performing the duties of the Executive Engineer since July, 1995 till 31.3.1996 continuously, he prayed for pay of Executive Engineer. He sent a reminder on 9.8.1999, reiterating his request made already. Thereafterwards, since there was no reply from the respondents concerned therein, he moved an application O.A.No.864 of 1999 for grant of salary payable to an Executive Engineer. By order dated 27.9.1999, the Central Administrative Tribunal directed the respondents therein to dispose of the representation within eight weeks from the date of receipt of the order copy in accordance with law.

4. By order dated 16.11.1999, the Appropriate Authority, Income Tax Department, disposed of the application rejecting the prayer for salary of Executive Engineer. The appropriate authority stated that the applicant, second respondent herein himself admitted that there was no written instructions by the authority; that the appropriate

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authority consisted of three members of whom Member-III is the Chief Engineer from Central Public Works Department, who alone would have given any oral or written directions; that no order of any such direction from Member-III was produced. Further, the authority who had to pass the order relating to the service conditions of an officer of the rank of Assistant Engineer and above in the Central Public Works Department was the Director General (Works)/Additional Director General (Works) of the Central Public Works Department. Considering the fact that no such orders were produced, there was no provision for granting of pay of Executive Engineer to an officer who discharge the duties of an Executive Engineer. Thus, on merits, the writ petitioner rejected the prayer.

5. Aggrieved of the said order, the applicant/second respondent herein, approached the Central Administrative Tribunal in O.A.No.987 of 1999, wherein, he prayed for setting aside the order dated 9.9.1999 and to direct the writ petitioner to pay the salary admissible to the post of Executive Engineer for the period from 1.7.1995 amounting to Rs.1,60,569/- with interest at 12% per annum. The applicant in the O.A./second respondent herein, contended that when he was performing the duties of a higher post, he should be paid the salary of higher post in accordance with F.R.49(I). The prayer in the O.A. was contested by the writ petitioner herein that in the absence of an order asking him to discharge the duties of a higher post, he was not entitled to any relief. It was further stated that none of the officials of the Appropriate Authority were empowered with any authority to confer any such higher status of the rank of an Executive Engineer. It was also pointed out that there was no exact assignment of duties and responsibilities either in the Income Tax Act or in the Public Works Department as regards the functioning of Technical Wing of the Appropriate Authority. Considering the nature of job of assisting the Technical Member of the Appropriate Authority, the writ petitioner submitted that the second respondent before this Court was not entitled to the relief sought for. By order dated 11th December 2000, the Central Administrative Tribunal allowed the O.A. and thus granted the relief prayed for.

6. A perusal of the order of the Central Administrative Tribunal shows that it came to the conclusion on the view that even though a written order was essential under F.R.49, even in the absence of the same, the principle in F.R.49 could be invoked if, as a matter of fact, an employee was discharging the duties of a higher post in obedience to the orders of the higher authorities. It further held that the exigencies of service also would have to be taken into service; in such case, the second respondent could not be denied of the monetary benefits attached to the post. Aggrieved of the said order, the Union of India, the Appropriate Authority, has preferred this writ petition.

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7. Even on the admitted facts, the contention of the writ petitioner merits acceptance by this Court. It is an admitted fact that the second respondent herein was working as an Assistant Engineer and his responsibility was not co-equal of that of an Executive Engineer. It is equally an admitted fact that a written order from the Central Public Works Department is essential, if he has to officiate as an Executive Engineer, entitling him for a higher pay. The conetntion of the writ petitioner is that, considering the nature of the dutyu assigned to the Technical Wing, namely, the First Technical Member of the Appropriate Authority to prepare the valuation report, none of the officials therein was empowered with any statutory or judicial power; hence, the mere preparation of the valuation report to assist a statutory body in the discharge of the function, per se, would not confer the rights and duties of an Executive Engineer or of a statutory character. The contention is a sustainable one for the reason that none of the provisions pertaining to Chapter XX-C confer any authority or judicial power on the Technical Wing. The order under Chapter XX-C is passed by the appropriate authority on the strength of the valuation of the property under question and that the valuation report submitted merely enables the writ petitioner to arrive at a decision required for the purpose of discharging the duties under Chapter XX-C. The Technical Wing is empowered with a statutory power. The writ petitioner contends that there was no post of an Assistant Engineer in the office of the appropriate authority; that due to diversion of one Assistant Engineer post from Valuation Cell, Income Tax Department, Chennai, one Assistant Engineer was transferred and posted in the office of the Appropriate Authority to assist the writ petitioner in the matter of evaluating the property. The contention of the second respondent as regards the principle to be applied even in the absence of a written order he had to function as an Executive Engineer has to be rejected, considering that the scope of F.R.49. The fact that the second respondent had assisted in the matter of preparation of the evaluation report in the absence of an Executive Engineer due to his superannuation does not mean that he is discharging the duties as an Executive Engineer. The presence or absence of an Executive Engineer in that post does not, in any way, reduce or increase the responsibility expected of an Assistant Engineer in the Technical Wing.

8. A perusal of F.R.49 shows that to claim the benefit of additional pay attached to a higher post, there must be a formal order by the Central Government. In the context of a mandatory requirement of a formal order, the mere discharge of any additional duty, per se, will not confer a semblance of post of higher status entitling an additional pay. The second respondent admits that there is no formal order from the competent authority and that there was mere oral direction from the Technical Member. This, however, does not satisfy the requirement of a transaction under F.R.49.

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Considering the above-said fact that there is no exact assignment of responsibilities and duties in writing from the second respondent's appointing authority as required under F.R.49, the order of the Central Administrative Tribunal is unsustainable and hence, the writ petition has to be allowed. The order of the writ petitioner rejecting the claim of the second respondent is legally valid.

In the circumstances, the order of the Tribunal is hereby quashed and the writ petition is allowed. There will, however, be no order as to costs. Connected W.P.M.P.No.15679 of 2001 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

To:

The Registrar,
Central Administrative Tribunal
Chennai Bench
Chennai-106.

1 cc to Mr.M.Veluswami, SCGSC, Sr. 3032

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